

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
Rural Health Support Mechanism)	WC Docket No. 02-60
)	
Further Notice of Proposed Rulemaking)	
)	

COMMENTS OF UNITED UTILITIES, INC.

In the Second Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking (FCC 04-289), the Commission seeks comments on several possible adjustments of its Rules related to the administration of the rural health care universal service mechanism.¹ United Utilities, Inc. (“United”) hereby responds to the Commission’s request for comments on whether the Commission should increase the percentage discount that rural health care providers (“RHCPs”) receive for Internet access and on whether infrastructure development to support eligible RCHPs’ access to advanced telecommunications and information services should be funded.

Summary

United supports the Commission increasing the level of funding support for Internet access available to RHCPs. Further, United respectfully requests that the Commission clarify its policy on the recovery by service providers of costs for infrastructure deployment and enhancement required for the provision of eligible services as a component of monthly service charges.

¹ Released Dec. 17, 2004, paras. 45-53.

Background

United Utilities, Inc. (United) is an Alaska native-owned telecommunications carrier providing local exchange services to approximately 12,000 customers in 60 remote rural Alaskan communities, scattered over a distance of 150,000 square miles. The population of the villages that United serves ranges from 25 in Birch Creek to 1,100 in Hooper Bay.² The average number of subscribers United serves in 57 village communities is 125 subscribers per village.

United has over 20 years experience in providing communications to these rural and remote areas of Alaska. Services include local telephone service and Internet access service. United has installed and operated microwave links as a part of its network, and satellite earth stations as a joint venture partner with AT&T Alascom. United provides E-Rate eligible services to most of the schools and libraries in the remote Alaskan communities United serves. The E-Rate program has brought these rural schools and libraries local exchange services, long distance services, business communications systems, Internet, and distance learning programs. United was recently awarded a contract by Yukon-Kuskokwim Health Corporation (YKHC), a rural health care provider, to support the provision of broadband telemedicine services linking 47 village clinics to YKHC's hospital in Bethel, Alaska. Under the USAC-approved multi-year contract, United will provide advanced telecommunications services to YKHC using a

² This excludes Bethel, Alaska, the largest community in the Yukon-Kuskokwim Delta region and the most populous community that United serves. The population of Bethel is approximately 5,500.

high-capacity terrestrial wireless network. United is in the process of constructing this microwave network.

Discussion

A. Monthly Internet Access Discount

The Commission seeks comment on whether its current 25% flat discount off the cost of monthly Internet access for eligible RHCPs is sufficient, and whether this discount should be increased. The Commission recognizes that its adoption of this discount in its 2003 *Report and Order*³ has not resulted in any challenge to the Rural Health Support Mechanism annual funding cap, although it remains sensitive on this point and insistent that eligible RHCPs continue to choose a level of service appropriate to their needs. In connection with this inquiry, the Commission specifically seeks comment on whether an increase of support would have positive or negative effects on facilities-based broadband deployment in rural areas.

In certain defined instances, United respectfully submits that the Commission should increase the percentage discount that the most disadvantaged RHCPs are eligible to receive for Internet access. The Commission should increase the percentage discount to these providers because United recognizes that numerous villages in the region it serves continue to lack access, or at least broadband access, to the Internet, and that an increase in the percentage discount would make it more feasible for rural clinics and other health care facilities that do not have Internet today to seek funding in support of such services.

³ *Rural Health Care Support Mechanism*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC –3-288, released Nov. 17, 2003, paras. 22-29.

It is probable that requests for Internet access to date have remained at low levels because many potential RHCPs do not have the means to pay 75% of the costly Internet access fees in their areas and therefore have not applied for funding support. By increasing support for Internet access and providing aid for a greater share of the service costs, the Commission would encourage the target group (i.e. the most economically disadvantaged RHCPs which are reliant on the discount) to apply for support through the Rural Health Support Mechanism.

The Regulatory Commission of Alaska (RCA) has recently published a report (“RCA Report”) on the availability of Internet access in rural Alaska.⁴ The RCA Report indicates that at least 50 communities in Alaska have no dial up or broadband Internet access, and that an additional 45 Alaskan communities have dial up access only (i.e. they do not currently have broadband service).

A guiding principle of the universal service provisions of the 1996 Telecommunications Act is that consumers in rural areas should have access to telecommunications and information services, including advanced telecommunications and information services, that are “reasonably comparable” to those services provided in urban areas and at rates “reasonably comparable” to those charged for similar services in urban areas.⁵ United submits that, in implementation of this principle, the Commission would be within its rights to adopt an “urban rate” concept for the support of Internet service comparable to

⁴ See the Regulatory Commission of Alaska’s *Alaska Internet Connectivity* report at <<http://www.state.ak.us/rca/Broadband/Connectivity.html>>.

⁵ 47 U.S.C. § 254(b)(3).

that presently used to support the delivery of eligible telecommunications services to qualified RHCPs.

Understanding, however, that the Commission remains concerned with ensuring that any liberalization of its funding standards will not place a strain on the Rural Health Care Mechanism annual funding cap, United respectfully proposes the following. The flat discount rate should generally remain at 25%. However, in circumstances where a RHCP, with the assistance of its telecommunications or information services provider, can demonstrate to USAC that the rural rate is at least twice as high as the urban rate for the same level of connectivity to the Internet, the RHCP should be entitled to receive a 50% discount off the cost of monthly Internet access.⁶ For example, if the urban rate for T-1 access to the Internet in the nearest urban area is \$2,000 per month and the rural rate is \$6,000 per month, the health care provider would be eligible for a \$3,000 discount ($\$6,000 \times 50\%$), as opposed to only a \$1,500 discount under the existing rules ($\$6,000 \times 25\%$).⁷

The 50% discount rate is a measured approach that targets additional support only in those areas where the rural costs exceed urban rates by two times or more. Although the 50% discount does not result in RHCPs paying the urban rate, it would reduce the

⁶ The same standards for determining “rural” versus “urban” rates as currently apply to telecommunications services under the Commission’s Rules would apply to the determination of comparable costs of Internet access.

⁷ In this example the rural rate would have to be at least \$3,000 more than the urban rate for the health care provider to take advantage of the 50% discount.

difference presently paid by health care providers by one third, or 33%.⁸ Applying a 50% discount when the rural rate is at least two times higher than the urban rate addresses the objective of Section 254(b)(3) of the Telecommunications Act by moving the rural rate closer to the urban rate, while at the same time retaining an incentive for the RHCP to contract only for the appropriate level of service required to support its needs.

B. Infrastructure Development

The Commission also seeks comments on whether to support infrastructure development or “network build out” for the benefit of RHCPs. United is of the view that the Commission is finally addressing the question of whether infrastructure deployment and enhancement should be made eligible for *direct* funding support. This issue was left unresolved in the Commission’s original *Universal Service Order*.⁹ The *Universal Service Order* anticipated support for infrastructure that is necessary to provide an eligible service under the Rural Health Care Mechanism:

“[W]e have the authority to establish rules to implement a program of universal service support for infrastructure development as a method to enhance access to advanced telecommunications and information services.”¹⁰

⁸ In the above example the HCP’s net cost with the 25% discount is \$4,500 (\$6,000 X 75%). With a 50% discount the HCP’s net cost is \$3,000 (\$6,000 X 50%). \$4,500 less \$3,000 equals \$1,500 divided by \$4,500 equals 33%.

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), paras. 632-635. This is in contrast to the Commission’s current approach that some carrier infrastructure costs may be passed on as a component of monthly service charges. See the discussion that follows.

¹⁰ *Id.*, para. 634.

The Commission concluded that the record at that time contained “insufficient information to determine the level of need for such infrastructure development or to estimate reliably the costs to support such development.”¹¹

The Commission has already established a policy supporting eligible carriers’ ability to recover a portion of their infrastructure investment out of recurring service charges. Several Commission decisions interpreting USAC’s funding role for broadband services under the E-Rate program have recognized that universal service support necessarily funds infrastructure costs in connection with a common carrier’s provision of service:

“We recognize that all service providers include within their prices to customers some amount of the cost of building facilities to provide the service. Indeed...we have allowed common carriers to include within their rates to customers some amount of the cost of the facilities used to provide such service to customers.”¹²

“In the Tennessee Order, the Commission established that a provider of Internet access could recover the costs of equipment and infrastructure build-out associated with the delivery of the Internet access service. The Commission noted that, in the ordinary course of business, companies may recover some portion of their infrastructure costs by building such costs into the recurring charges for service provided over that infrastructure.”¹³

In these decisions, the Commission’s focus has to a large degree been on ensuring that the beneficiary eligible school or library, in conformance with Commission Rules, is not *acquiring* infrastructure with the support of universal service funding, but that the service provider is itself retaining ownership of such facilities.

¹¹ *Id.*, para. 635.

¹² *Department of Education of the State of Tennessee*, 14 FCC Rcd 13734 (1999), para. 29. *See, generally*, 47 C.F.R. Parts 32, 36, 65 and 69.

¹³ *Request for Review by Nassau County Board of Cooperative Educational Services*, Wireline Competition Bureau, 17 FCC Rcd 24584 (2000), para. 6.

The Commission, in its *Tennessee* Order, recognized the importance of allowing eligible service providers to recover infrastructure cost as part of eligible service charges as a means of encouraging competition in the provision of services to beneficiary schools and libraries.¹⁴ In affirming its *Tennessee* ruling in its subsequent *Brooklyn Public Library* decision,¹⁵ the Commission established further guidelines to balance its commitment to ensuring the build-out of competitive services against significantly funding a new company's network. In *Brooklyn Public Library*, the Commission ruled that substantial infrastructure investment by the service provider under a multi-year contract for eligible services must be pro-rated over at least three years of the term of the agreement, rather than be recovered at the front end as a one-time non-recurring charge.¹⁶ Again, the Commission was careful in confirming that the record established that the service provider, and not the eligible school or library, would retain ownership of the telecommunications facilities being deployed for the services in question, and it further recognized that the service provider would be able to use such facilities, once deployed, for customers other than the beneficiary public library.¹⁷ In establishing this policy, the Commission reflected as one underlying concern that permitting extremely large upfront payments for infrastructure charges could prematurely drain available universal service funds to the detriment of other eligible entities without assurance that the funded program would, in fact, be performed for the duration of the multi-year agreement.¹⁸

¹⁴ 14 FCC Rcd 13734, para. 42.

¹⁵ 15 FCC Rcd 18598 (2000).

¹⁶ *Id.*, paras. 11-20.

¹⁷ *Id.*, paras. 14-15.

¹⁸ *Id.*, paras. 18-19.

United submits that the public policy interests and concerns governing a carrier's entitlement to recover infrastructure charges incurred in order to provide eligible services under the E-Rate program are equally applicable to the Rural Health Care Mechanism. The Commission was clear in adopting this policy that it applied to the service provider's build out of wide area network infrastructure, and not to inside wiring which is unique to the schools and libraries program.¹⁹ The safeguards that the Commission established in recognizing a service provider's entitlement to recapture the cost of infrastructure are equally applicable in the context of the Rural Health Support Mechanism: (1) The infrastructure must be required for the provision of eligible services on competitive terms. (2) The infrastructure must remain the property of the service provider, and not be acquired, directly or indirectly, by the beneficiary health care provider. (3) Large non-recurring costs, in relation to recurring charges, should be avoided as a means of recovering infrastructure charges at the front end and, in multi-year contracts, such costs should be pro-rated over a minimum of three years. Finally, there is no prohibition in Section 54.600 of the Commission's Rules governing the Rural Health Support Mechanism against a common carrier recovering a portion of its capital expenditures on infrastructure and facilities through service charges.

As the review of Commission decisions set forth above reveals, it is clear that the Commission has established that some infrastructure costs are a valid component of recurring services charges for USAC eligible services. As explained above, United believes that USAC should recognize that the legal and policy underpinnings of this analysis are equally applicable to the Rural Health Support Mechanism as they are to the

¹⁹ 14 FCC Rcd 13734, paras. 35-40.

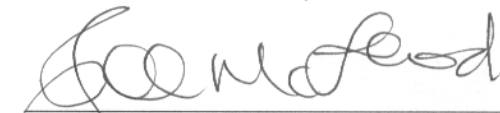
Schools and Libraries Program. However, the Commission has not yet expressly applied this policy in the context of a Rural Health Support Mechanism case. United respectfully submits that this NPRM is an appropriate vehicle for the Commission to clarify its stance on the recovery of infrastructure costs as a component of monthly service charges under the Rural Health Support Mechanism. To allow USAC to stray from this policy would undermine competitive neutrality because it would restrict eligibility to offer covered services only to service providers with existing infrastructure.

Conclusion

The Commission should increase the level of funding support for Internet access available to some RHCPs in accordance with the guidelines suggested above. The Commission should also clarify that its policy on the recovery by service providers of costs for infrastructure deployment and enhancement required for the provision of eligible services as a component of monthly service charges identified for the E-Rate program is equally applicable to the Rural Health Support Mechanism.

Respectfully submitted,

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